

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ALVIN BALDUS, CARLENE BECHEN,  
ELVIRA BUMPUS, RONALD BIENDSEI,  
LESLIE W. DAVIS, III, BRETT ECKSTEIN,  
GEORGIA ROGERS, RICHARD  
KRESBACH, ROCHELLE MOORE, AMY  
RISSEEUW, JUDY ROBSON, JEANNE  
SANCHEZ-BELL, CECELIA SCHLIEPP,  
TRAVIS THYSSEN and CINDY BARBERA,

Case No. 11-C-562  
JPS-DPW-RMD

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE  
MOORE, and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government  
Accountability Board, each only in his official  
capacity: MICHAEL BRENNAN,  
DAVID DEININGER, GERALD NICHOL,  
THOMAS CANE, THOMAS BARLAND,  
TIMOTHY VOCKE, and KEVIN KENNEDY,  
Director and General Counsel for the Wisconsin  
Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR.,  
THOMAS E. PETRI, PAUL D. RYAN, JR.,  
REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants

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VOCES DE LA FRONTERA, INC., RAMIRO  
VARA, OLGA VARA, JOSE PEREZ, and  
ERICA RAMIREZ,

Plaintiffs,

v.

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Case No. 11-CV-1011  
JPS-DPW-RMD

Defendants.

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**Defendants' Statement of Proposed Findings of Fact in Support of Their Motion for Summary Judgment on Counts 2-6 and 8 As Alleged by the *Baldus* Plaintiffs, Counts 4 and 5 As Alleged by the *Baldwin* Intervenor-Plaintiffs and the Single Count As Alleged by the Consolidated *Voces De La Frontera* Plaintiffs**

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Defendants Michael Brennan, David Deininger, Gerald Nichol, Thomas Cane, Thomas Barland, and Kevin Kennedy (each in their official capacity), by the undersigned attorneys, submit the following statements of proposed findings of fact in support of their motion for summary judgment on counts 2-6 and 8.

1. In their recent discovery production, intervenor-plaintiffs turned over an email reflecting that the initial reaction to the redistricting plan of Democratic Representative Ron Kind's Chief of Staff was that "[t]he map isn't too unreasonable." *Kelly Dec.*, ¶ 2, ex. A.

2. Plaintiffs' expert, Dr. Kenneth Mayer, testified as follows at his January 27, 2012 deposition:

Q. Given your analysis of the six African American districts, is there a large enough minority population in that area to create a seventh African American majority-minority district?

A. I don't believe there is.

*Kelly Dec.*, ¶ 5, ex. D at 193:19-25.

3. Prior to the enactment of Act 43, Wisconsin's legislative districts were the by-product of a court-drawn map. *Kelly Dec.*, ¶ 6, ex. E, at ¶ 12(a); *Baumgart et al. v. Wendelberger et al.*, Case No. 01-C-0121, E.D. Wis.

4. Under that plan, there were two state senate districts with African American majorities (senate districts 4 and 6) and five assembly districts with African American majorities (assembly districts 10, 11, 16, 17 and 18). *Kelly Dec.*, ¶ 6, ex. E at ¶ 13(a), exhibits B-D.

5. Under the court drawn plan, a sixth assembly district—assembly district 12—began the decade with a 32.77% African American voting age population and ended the decade at 48.99%, never quite reaching a majority voting age population. *Kelly Dec.*, ¶ 6, ex. E at ¶ 13(a, b), exhibits B-D.

6. Act 43 shifted the lines of assembly district 12 to capture additional African American voters, thereby creating a sixth African American assembly district. *Kelly Dec.*, ¶ 6, ex. E at ¶ 13, exhibits B-D.

7. The following table illustrates the continued African American voting strength in all of the Senate and Assembly Districts at issue and the improved strength in assembly district 12 as a result of Act 43:

<b><u>African American Assembly District Voting Age Populations</u></b>			
<b><u>Assembly Districts</u></b>	<b><u>2002 Under Court-Drawn Map</u></b>	<b><u>2010 At Time of Census</u></b>	<b><u>Under Act 43</u></b>
AD10	67.08%	67.43%	61.79%
AD11	62.85%	75.84%	61.94%
<b><i>AD12</i></b>	<b><i>32.77%</i></b>	<b><i>48.99%</i></b>	<b><i>51.48%</i></b>

AD16	60.45%	55.87%	61.34%
AD17	61.88%	74.11%	61.33%
AD18	56.70%	58.85%	60.43%

*Kelly Dec.*, ¶ 6, ex. E, ¶ 13, exhibits B-D.

8. Act 43 not only maintains the five majority African American Assembly Districts, but adds a sixth district as well. *Kelly Dec.*, ¶ 6, ex. E, ¶ 13, exhibits B-D.

9. Plaintiffs' expert, Dr. Kenneth Mayer, has concluded that the two Senate Districts and six Assembly Districts that have a majority voting age African American population is the optimum result for purposes of African American voting strength. *Kelly Dec.*, ¶ 5, ex. D at 193:19-25; *Kelly Dec.*, ¶ 7, ex. F at 25.

10. Dr. Mayer's expert report notes that even if the African American population in assembly districts 10, 11, 16, 17 and 18 were to be reduced and redistributed so that each of the five districts had exactly 55% African American voting age population, "the numbers are not large enough to create a 7th majority-minority African-American Assembly district." *Kelly Dec.*, ¶ 7, ex. F at 25.

11. Under Act 43, nearly a quarter of the entire Wisconsin Latino population is located within one heavily Latino-populated senate district, senate district 3, with the majority of the Latino population in assembly districts 8 and 9. *Kelly Dec.*, ¶ 6, ex. E at ¶ 16.

12. The 2002 court plan created only one majority Latino population assembly district, assembly district 8, with a total Latino population of 62.14% and a voting age Latino population of 58.34%. *Kelly Dec.*, ¶ 6, ex. E at ¶ 17(a).

13. The second largest Latino population district, assembly district 9, had a total Latino population of only 28.42% and a voting age Latino population of just 22.94%. *Kelly Dec.*, ¶ 6, ex. E at ¶ 17(a).

14. The table below shows the Latino population changes reflected by the 2010 census and how Act 43 made adjustments to maximize Latino voter influence:

<u><b>Latino Assembly District Voting Age Populations</b></u>			
<u><b>Assembly Districts</b></u>	<u><b>2002 Under Court- Drawn Map</b></u>	<u><b>2010 At Time of Census</b></u>	<u><b>Under Act 43</b></u>
AD8	58.34%	65.50%	60.52%
<b><i>AD9</i></b>	<b><i>22.94%</i></b>	<b><i>46.18%</i></b>	<b><i>54.03%</i></b>

*Kelly Dec.*, ¶ 6, ex. E at exhibits B-D.

15. Under the 2002 court plan, assembly district 8 has been continuously represented by a Latino member. *Kelly Dec.*, ¶ 6, ex. E at ¶ 18.

16. Under the 2002 court plan, assembly district 9 was continuously represented by the same non-Latino Assembly member since the plan was put in place. *Kelly Dec.*, ¶ 6, ex. E at ¶ 18.

17. In his Rule 26 Expert Report, Dr. Mayer focuses on elections outside of assembly districts 8 and 9 (including two state-wide elections and four county-wide elections) while excluding the very assembly races at issue. *Kelly Dec.*, ¶ 6, ex. E at ¶ 19.

18. But Dr. Meyer skips over a critical fact—the Latino candidate won a majority of those races. *Kelly Dec.*, ¶ 6, ex. E at ¶ 19.

19. After expert deadlines passed and after expert reports were exchanged, plaintiffs attempted to remedy this problem by producing an "ecological inference run" relating to

individual wards, or portions of wards, created in 2002 in the area that is now covered by assembly districts 8 and 9. *Kelly Dec.*, ¶ 5, ex. D at 210:9-13; *Kelly Dec.*, ¶ 8, ex. G.

20. Looking to wards, or portions of wards, or aldermanic districts would only be necessary to the extent that there were no adequate information from the Assembly District itself. *Kelly Dec.*, ¶ 5, ex. D at 73:1-12.

21. Those aldermanic elections are non-partisan and pose particular problems for the election of minority candidates. *Kelly Dec.*, ¶ 5, ex. D at 74:10-18.

22. The court-drawn plan of 1992 moved 257,000 people (approximately 5.25 % of the population) into districts where they would wait six years for an opportunity to vote for state senator. *Kelly Dec.*, ¶ 9, ex. H at ¶ 5, Table 4.

23. In 2002, the court plan moved 171,163 people (approximately 3.14 % of the population). *Kelly Dec.*, ¶ 9, ex. H at ¶ 5, Table 4.

24. Act 43 appeared initially to causes a six-year wait for 299,704 persons ( 5.26% of the population). *Kelly Dec.*, ¶ 9, ex. H at ¶ 5, Table 4.

25. Some 164,843 of those, however, live in districts where a special election was held in 2011, and therefore only 134,845 persons (2.37 % of the population) will be subject to a six-year delay. *Kelly Dec.*, ¶ 9, ex. H at ¶ 5, Table 4; *Kelly Dec.*, ¶ 10, ex. I at ¶ 7.

26. The 2.37% of the population that will wait an additional two years between senate elections under Act 43 is lower than percentages advocated in 2002 by Plaintiffs' current expert, Professor Mayer, who advocated four different maps that had proportionally greater delayed voting (from 5.27 % - 5.67% of the population) than does Act 43. *Kelly Dec.*, ¶ 10, ex. I, Table 5.

27. The 2.37% of the population that will wait an additional two years between senate elections under Act 43 also compares favorably with plans enacted in other states this redistricting cycle—including Oklahoma, Oregon, Ohio, Missouri, and California—which range from 3.02% in Oregon to 10.66% in California. *Kelly Dec.*, ¶ 10, ex. I, Table 6.

28. Democratic legislators introduced the 1983 Legislative maps as Assembly Bill 1 on July 11, 1983 ("the bill"). A single public hearing was held that same day. The Assembly passed the bill on July 13, the Senate did so on July 14, and the Governor signed it into law on July 15. *Kelly Dec.*, ¶ 2.

29. On July 11, 1983, Assembly Bill 1 was introduced by the Committee on Assembly Organization. It was read for the first time and referred to the Committee on Elections the same day. *Kelly Dec.*, ¶ 2, ex. A.

30. On July 11, 1983 – the same day it was introduced—the first and only public hearing also was held. *Kelly Dec.*, ¶ 2, ex. A.

31. On July 12, 1983, the Committee on Elections recommended its passage, by a vote of 7 to 3. *Kelly Dec.*, ¶ 2, ex. A.

32. On July 13, 1983, it was read a second time. *Kelly Dec.*, ¶ 2, ex. A.

33. On July 13, 1983, the rules were suspended; it was read a third time; it passed the Assembly by a vote of 51 to 44; and it was ordered immediately messaged to the Senate. *Kelly Dec.*, ¶ 2, ex. A.

34. 12 amendments were offered to the bill in the Assembly; 3 further amendments would be offered in the Senate. *Kelly Dec.*, ¶ 2, ex. A.

35. On July 14, 1983, it was read the first time in the Senate, and referred to the Committee on Urban Affairs and Government Operations. The Committee recommended passage by a 3 to 2 vote. *Kelly Dec.*, ¶ 2, ex. A.

36. On July 14, 1983, the rules were suspended and it was read a second time and a third time. The same day, the Senate passed the bill and ordered it immediately messaged. *Kelly Dec.*, ¶ 2, ex. A.

37. On July 15, 1983, the Governor signed it. It was published as 1983 Wisconsin Act 29 on July 19, 1983. *Kelly Dec.*, ¶ 2, ex. A.

38. The Governor vetoed an earlier plan that was inserted into the state budget bill by the Democratic caucus—without public hearing—four weeks prior. *Kelly Dec.*, ¶ 3, ex. B.

39. The court-drawn plan of 1982 initially moved 713,225 people into districts where they would wait six years for an opportunity to vote for state senator. *Wisconsin State AFL-CIO v. Elections Board*, 543 F.Supp. 630, 659 (E.D. Wis. 1982).

40. Ultimately, the 1982 court plan would delay voting for 529,293 persons. *Milw. Journal*, May 27, 1984, at A1, A12, "La Follette plans quick appeal on redistricting," courtesy copy attached to *Kelly Dec.*, ¶ 11, ex. J.



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